



**Federal Communications Commission  
Washington, D.C. 20554**

February 5, 2019

*In Reply Refer to: 1800B3-KV*

3B Properties, Inc.  
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**In re: W289CU, Knoxville, TN**  
File No. BLFT-20181004ABC  
Facility ID No. 201183

**Petition to Deny and  
Interference Complaint – Response Required**

Gentlemen:

We have before us: 1) a “Petition to Deny” (Petition) the referenced license application (License Application) of Hodges Media, LLC (Hodges) for FM Translator Station W289CU, Channel 289, Knoxville, Tennessee, (W289CU or Station),<sup>1</sup> filed on October 15, 2018, by 3B Properties, Inc. (3B), licensee of Station WIHG(FM), Channel 289, Rockwood, Tennessee; 2) an “Opposition to Petition to Deny” (Opposition) filed on October 23, 2018, by Hodges; 3) an “Emergency Interference Complaint” (Complaint) filed on November 30, 2018, by 3B; and 4) an “Opposition to Emergency Interference Complaint” (Complaint Opposition) filed on December 12, 2018, by Hodges.<sup>2</sup> As detailed below, we deny the Petition and require Hodges to respond to the Complaint.

**Background.** On June 6, 2018, Hodges filed an application to construct a new FM Translator

<sup>1</sup> On October 04, 2018, the Station filed the License Application covering a construction permit (File No. BNPFT-20180606AAA) to operate on Channel 289, Knoxville, Tennessee as a Translator Station for the co-owned primary station WKGN(AM), Knoxville, Tennessee.

<sup>2</sup> On November 28, 2018, 3B filed an “Emergency Interference Complaint and Informal Objection” which it withdrew on November 29, 2018, because “the Informal Objection portion of this filing was an improper filing and [it would] . . . resubmit the ‘Emergency Interference Complaint’ thru proper FCC channels.” Exh. 1, Supplement.

Station (New Station Application) on Channel 289 at Knoxville, Tennessee.<sup>3</sup> 3B did not oppose the New Station Application. On July 2, 2018, Commission staff granted the uncontested New Station Application by issuing a construction permit (Permit).<sup>4</sup> On October 4, 2018, Hodges filed the License Application covering the Permit.

On October 15, 2018, 3B filed the Petition, arguing that the License Application should be denied because “the present operation of W289CU cannot possibly comply with Section 74.1203(a)(3) and Section 74.1204(f) of the Rules . . . .”<sup>5</sup> It claims that the Station is causing actual interference to WIHG:

The [Station] . . . commenced operation on Channel 289 (the same channel as WIHG) sometime on or around October 11, 2018. During a two-day period of October 11 and 12, 2018, the WIHG staff received approximately 12 complaints of interference in and around areas of Knoxville including Cedar Bluff, Farragut, Kingston, Turkey Creek, Campbell Station, Pellissippi Parkway and West Hills. Because our staff was unaware of what was wreaking havoc on our Knoxville area signal, most of those calls were not documented. Because of the time sensitive nature of filing a Petition to Deny, 3B will be filing a more detailed “Interference Complaint” in the next couple of days.<sup>6</sup>

3B notes that previously two other translators “attempted operation in or around the Knoxville Metro area”<sup>7</sup> but were involved in interference proceedings: W241AA, Huntsville, Alabama, filed on January 31, 1995; and (2) W291AA, Knoxville, Tennessee, filed on June 12, 2006.<sup>8</sup> 3B also submits an Arbitrends Trend Report<sup>9</sup> and an engineering map<sup>10</sup> and claims that “[t]he W289CU interfering contour encompasses 98.7 percent of Knox County, where WIHG has at least 1,100 documented listeners, and . . . [the] counties of Anderson, Blount and Sevier, where WIHG has at least 10,000 total listeners . . . .”<sup>11</sup>

On October 23, 2018, Hodges responded that the Petition should be dismissed as procedurally defective. It contends that the Petition: 1) is impermissible because petitions to deny license applications are not allowed under the Commission’s rules; 2) failed “to include any documentation of the twelve alleged interference complaints against W289CU . . . ;”<sup>12</sup> and 3) raised irrelevant arguments, as Section 74.1204(f) of the Commission’s rules (Rules) is inapplicable to actual interference allegations, and the W241AA and W291AA interference proceedings involved other parties and have been resolved.

On November 15, 2018, Commission staff granted the License Application without acting on the Petition.<sup>13</sup>

On November 30, 2018, 3B filed a Complaint arguing that “W289CU must immediately cease operations until all complaints of interference can be resolved . . . [and if unresolved] the license for

<sup>3</sup> See File No. BNPFT-20180606AAA.

<sup>4</sup> See “Broadcast Actions,” Report No. 4972 (dated Jul. 6, 2018).

<sup>5</sup> Petition at 4.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Exh. 2, *Id.*

<sup>9</sup> Exh. 1, *Id.*

<sup>10</sup> Exh. 3, *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Opposition at 4.

<sup>13</sup> See “Broadcast Actions,” Report No. 49366, (dated Nov. 20, 2018). Because we are denying the Petition, we find the grant of the License Application before acting on said Petition to be harmless error.

W289CU must be revoked . . . .”<sup>14</sup> In the Complaint, 3B attaches nine listener complaints alleging that W289CU is interfering with their WIHG reception.<sup>15</sup>

On December 12, 2018, Hodges opposed the Complaint, arguing that certain listeners did not file valid complaints and requesting that the remaining listener complaints be held in abeyance until the Commission acts on the FM Translator Interference Notice of Proposed Rulemaking (*Translator NPRM*).<sup>16</sup> It contends that Worthington, Farney, and Singer failed to identify as regular listeners of WIHG,<sup>17</sup> and Smith and John failed to provide complete contact information.<sup>18</sup> Next, Hodges opines that in *Translator NPRM* the Commission proposed limiting complaints to those within the 54 dBU service contour of the desired station, and he attaches engineering showings<sup>19</sup> to support his claims that “none of the locations of [remaining four] listener complaints . . . are within WIHG’s 54 dBU service contour.” Hodges requests that action on these complaints be withheld until the Commission issues a decision in the translator proceeding. Lastly, Hodges declares that 3B’s request for W289CU to immediately cease operations is improper because the Rules afford Hodges an initial opportunity to resolve the interference.

**Discussion. *The Petition.*** As an initial matter, neither the Communications Act of 1934, as amended (the “Act”), nor the Rules provides for the filing of a petition to deny a license application.<sup>20</sup> Therefore, we will treat the Petition as an informal objection under Section 73.3587 of the Rules.<sup>21</sup> Informal objections, like petitions to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.<sup>22</sup>

Section 319(c) of the Act<sup>23</sup> imposes a stringent standard on challenges to license applications. So long as “all the terms, conditions, and obligations set forth in the application and permit have been fully met,” Hodges is entitled, as an applicant for a license to cover a construction permit, to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the Station against the public interest.<sup>24</sup> The Commission traditionally is reluctant to designate license applications for hearing in these circumstances and, in most instances, considers the

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<sup>14</sup> Complaint at 1.

<sup>15</sup> The following listeners filed complaints: Connie Worthington (Worthington); Rich Marino (Marino); Brenda Farney (Farney); Chris Singer (Singer); Stephen Smith (Smith); Michael Hubbard (Hubbard); Larry Rosenbalm, Jr. (Rosenbalm); Renni P. Morris (Morris); and “John” (John). Complaint at 4-12.

<sup>16</sup> See *Amendment of Part 74 of the Commission Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119, FCC 18-60, (May 10, 2018).

<sup>17</sup> Complaint Opposition at 4-5.

<sup>18</sup> *Id.* at 5. As an aside Hodges notes that Listeners John and Rosenbalm did not identify W289CU as the interference source but does not argue this as a reason to disqualify their complaints. *Id.* at note 22.

<sup>19</sup> *Id.* at Exhs. A – C.

<sup>20</sup> See 47 U.S.C. § 309(c); 47 C.F.R. §§ 73.3580(a)(3), 73.3584(a). See also, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Letter, 21 FCC Rcd 8677 note 1 (MB 2006).

<sup>21</sup> *Id.* § 73.3587.

<sup>22</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

<sup>23</sup> 47 U.S.C. § 319(c).

<sup>24</sup> See 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

grant of such application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.<sup>25</sup>

The Rules regarding FM translators restrict FM translator stations to operate strictly on a secondary basis and limit their service. Section 74.1203(a)(3)<sup>26</sup> of the Rules states that an FM translator station will not be permitted to continue to operate if it causes any actual radio signal interference to the direct reception by the public of the off-the-air signals of any authorized broadcast station.<sup>27</sup>

3B alleges that W289CU's operations are causing actual interference to WIHG's signal. Therefore, Section 74.1204(f) which addresses potential interference in proposed operations is inapplicable.<sup>28</sup> In addition, the long since resolved interference proceeding involving Translator Stations W241AA and W291AA are irrelevant to this proceeding.

Additionally, actual interference is based on a complaint from one or more listeners indicating that the signal they regularly receive is being impaired by the signal radiated by the FM translator station. In particular, "the staff has routinely required a listener complainant to include the listener's name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station."<sup>29</sup> Section 74.1203(b)<sup>30</sup> of the Rules states that if the interference cannot be properly eliminated by the application of suitable techniques, the operation of the offending FM translator station shall be suspended and shall not be resumed until the interference has been eliminated.

In order to investigate allegations of actual interference, listener complaints are required. Here, in the Petition, 3B failed to include any listener complaints. Therefore, we will deny the Petition due to its failure to demonstrate that Hodges did not meet the terms of its Permit or that grant of the License Application would be inconsistent with the public interest.

*The Complaint.* In the Complaint, 3B submitted nine listener complaints. We find that two listeners, Smith and "John," did not submit proper complaints because they failed to include sufficient contact information necessary for Hodges to investigate their interference complaints.<sup>31</sup>

Regarding the remaining seven listeners, we find that they submitted valid complaints and will require Hodges to remediate their complaints. We reject Hodges' request to hold the remaining seven listener complaints in abeyance until the Commission issues a decision in the ongoing *Translator NPRM* proceeding. We will not implement possible changes proposed in the *Translator NPRM* nor delay Commission processes until such time as final action has been made therein.<sup>32</sup> Additionally, concerning listeners Worthington, Farney, and Singer we disagree with Hodges that they are not regular listeners of

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<sup>25</sup> See, e.g., *Meyer Broadcasting Company*, Memorandum Opinion and Order, 65 FCC 2d 438, 441 (1977).

<sup>26</sup> 47 CFR § 74.1203(a)(3).

<sup>27</sup> An FM translator station creating actual radio signal interference to any authorized broadcast station is obligated to eliminate the interference, regardless of the location where the impaired signal reception occurs.

<sup>28</sup> Specifically, Section 74.1204(f) provides, in pertinent part: "An application for an FM translator station will not be accepted for filing even though the *proposed operation* would not involve overlap of field strength contours with any other station . . ."

<sup>29</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, FCC 18-60, at para. 7 (2018) (citing *Creation of an LPFM Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15431-31 para. 83 (2012)).

<sup>30</sup> 47 CFR § 74.1203(b).

<sup>31</sup> Smith failed to list his address, and "John" failed to provide his last name and address. Complaint at 8 and 12.

<sup>32</sup> See, e.g., *WGTW-TV, Millville, New Jersey*, Letter order, 32 FCC Rcd 7288, 7291 (MB 2017), citing *In re Application of Catocin Broadcasting Corp.*, FCC 86-335 (July 31, 1986); *Palm Beach Cable Television Co.*, Memorandum Opinion and Order, 78 FCC 2d 1180, 1183 (1980); *Metromedia, Inc. (WNEW-TV)*, Opinion, 66 FCC 2d 566, 568 (1977) (until such time as a policy has been modified or changed, it should be applied according to its terms, and the Commission has not issued an order doing so).

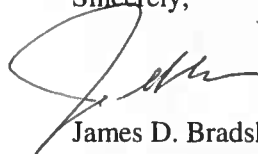
Station WIHG. Rather we find that each reported how interference had impacted their ability to listen to WIHG.<sup>33</sup>

Pursuant to Section 74.1203 of the Rules,<sup>34</sup> W289CU is required to eliminate any actual interference it causes. Therefore, it is necessary for Hodges to submit a detailed report (Interference Response) on each listener complaint, even if an individual listener has previously filed a complaint in a different interference proceeding that it has addressed. For each of the seven actionable listener complaints, the Interference Response must include: (1) the name and address of the complainant; (2) specific devices receiving the interference (*i.e.* type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by the Station for each device allegedly receiving the interference and whether such interference persists. Each of the listener complaints must be addressed individually.

**Conclusion.** Based on the above, IT IS ORDERED, that the Petition to Deny filed by 3B Properties, Inc. on October 15, 2018, treated herein as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED that within thirty days of this letter, Hodges must take appropriate actions required by the provisions of 47 CFR § 74.1203 to resolve all complaints of interference to fulfill its obligations and submit its Interference Response.<sup>35</sup> Further action on the Complaint will be withheld for a period of thirty days from the date of this letter to provide Hodges an opportunity to respond. Failure to correct all complaints within this time may require Station W289CU to suspend operation pursuant to 47 CFR § 74.1203 of the Rules.

Sincerely,



James D. Bradshaw  
Senior Deputy Chief  
Audio Division  
Media Bureau

<sup>33</sup> Specifically: 1) Worthington "had been able to listen to WIHG as she traveled to and from work. Now interference begins on Highway 62 . . . and increases . . . on Pellissippi Parkway. She is no longer able to pick up WIHG between Pellissippi Parkway and Walker Springs, or Kingston Pike . . ."; 2) Farney "listens to . . . WIHG as she traveled to and from work . . . She reports interference from Fox Sports Radio (WKGN) begins at I40/I75 Split and continues until she passes Pellissippi Parkway and Fox Sports completely shuts WIHG out. She could always hear . . . WIHG along I40 when she exited Cedar Bluff Road, traveling to Kingston Pike, then to . . . Rocky Hill and Northshore. Since WKGN commenced operation on October 11<sup>th</sup>, she can no longer listen to . . . WIHG [at these locations];" and 3) Singer "had been able to listen to WIHG as he traveled to and from work. Now interference begins at the I40/I75 split and continues to the Watt Road Exit. The signal clashes with WKGN along Watt Road from I40 to Hickory Creek Road . . . ." Complaint at 4, 6-7.

<sup>34</sup> 47 CFR § 74.1203.

<sup>35</sup> Hodges should also send a courtesy via email to Kim Varner at kim.varner@fcc.gov and James Bradshaw at james.bradshaw@fcc.gov. Additionally, the obligation to resolve interference complaints is ongoing. Specifically, should any complaints be filed in the future, Licensee must resolve or address those complaints within 30 days of receipt.